

**STATE OF MONTANA TERM CONTRACT**

Department of Administration  
State Procurement Bureau  
165 Mitchell Building  
PO Box 200135  
Helena, MT 59620-0135  
Phone: (406) 444-2575 Fax: (406) 444-2529  
TTY Users-Dial 711  
<http://www.discoveringmontana.com/doa/gsd>

**T.C. # 456-B**  
**TELECOMMUNICATIONS EQUIPMENT**

**This is an exclusive contract.**

	FROM	July 1, 2004	CONTRACT YEAR	NEW (      )
	TO	June 30, 2005		RENEW (x) 4 <sup>th</sup> renewal, 7 <sup>th</sup> year
VENDOR ADDRESS	Nextira One 50 South Last Chance Gulch #2 Helena, MT 59601		ORDER ADDRESS	SAME
ATTN:	Joane Bayer		ATTN:	
PHONE:	406-444-0174		PHONE:	
FAX:	406-444-0179		FAX:	

Prices: PER AGREEMENT

Delivery: PER AGREEMENT

F.O.B.: AGENCY LOCATION

Terms: NET 30 DAYS

Remarks: All requests for telephone systems must be approved and coordinated by the Information Technology Services Division. Contact Penne Beto at 444-0707 for assistance.

IFB/RFP No.:

9846-W

BRAD SANDERS, Contracts Officer

**AUTHORIZED SIGNATURE**

## **STATE OF MONTANA - TERM CONTRACT**

### **Standard Terms and Conditions**

**The following standard terms apply unless specifically stated otherwise within the term contract.**

#### **REFERENCE TO CONTRACT**

The contract (Purchase Order) number **MUST** appear on all invoices, packing lists, packages and correspondence pertaining to the contract. Furnish all invoices in triplicate.

#### **SHIPPING**

Goods shall be shipped prepaid, F.O.B. Destination. In the event the terms specify F.O.B. Shipping Point, shipping charges will be prepaid and itemized as a separate line item on invoicing. Such shipments shall be via the least expensive way. The State reserves the right to refuse any C.O.D. delivery.

#### **PAYMENT TERM**

All payment terms will be computed from the date of delivery of goods OR receipt of a properly executed invoice, whichever is later. The State is allowed 30 days to pay such invoices.

#### **TAX EXEMPTION**

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

#### **HAZARDOUS CHEMICAL INFORMATION**

The contractor shall provide one set of the appropriate material safety data sheets and container label upon delivery of a hazardous chemical to the user agency. All safety data sheets and labels will be in accordance with the OSHA "Hazard Communication Rule", 29 CFR 1910 and 50-78-101 through 50-78-402 MCA.

#### **VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

#### **NON-DISCRIMINATION**

The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Please provide as much advance notice as possible for requests.

The contractor must comply with the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975,

the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. All hiring for goods and services purchased by this contract must be on the basis of merit and qualifications; there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

#### **HOLD HARMLESS/INDEMNIFICATION**

The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the contractor and/or its agents, employees, subcontractors or its representatives under this agreement, all to the extent of the contractors negligence.

#### **ACCESS AND RETENTION OF RECORDS**

The contractor agrees to provide the Department, Legislative Auditor or their authorized agents, access to any records necessary to determine if the contract has been complied with. The contractor agrees to create and retain records supporting the services rendered (or goods delivered) for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or third party.

#### **CONFORMANCE WITH INVITATION FOR BID/PROPOSAL**

No alteration in any of the terms, conditions, delivery, price, quality, quantities or specifications of the order as established by quotation from the contractor, shall be granted without prior written consent of the State Procurement Bureau. Goods delivered which do not conform to the contract terms, conditions and specifications may be rejected and returned at the contractor's expense.

State agencies will place orders directly with the contractor during regular working hours. Orders may be placed by phone and will be confirmed with a written memo or purchase order. The agency will reference the term contract number on all purchase orders or correspondence pertaining to the contract.  
Revised 05/99

**SECTION 1  
INTRODUCTION**

**1. Purpose**

The purpose of this exclusive Term Contract is to provide State agencies with an expedited means of obtaining Telephone Systems in accordance with 2-17-501, MCA, as administered by the Department of Administration, Information Technology Services Division.

**1.1 Contractor/Subcontractor**

Nextira One is the contract holder. It shall not assign any part of this or a subsequent contract to a third party without first obtaining written consent of the State Procurement Bureau. The contract holder will provide all product, service (including warranty service), and any other support provided under this contract.

**1.2 Liaison**

**1.2.1 Contractor Liaison**

Nextira One, LLC  
50 South Last Chance Gulch #2  
Helena, MT 59601  
444-0174 Phone  
444-0174 Fax

**1.2.2 Contract Management Liaison**

This contract is managed by the Information Technology Services Division of the Department of Administration for the State of Montana in accordance with 2-17-501, MCA. Contract management inquiries and problems should be addressed to:

Penne Beto  
Department of Administration  
Information Technology Services Division  
Room 229, Mitchell Building  
Helena, MT 59620-0113  
444-0707 Phone  
444-2701 Fax

**SECTION 2**  
**CONTRACT TERMS AND CONDITIONS**

**2. Contract Provisions**

This Term Contract is issued in conjunction with the agreement between the Contractor and the Information Technology Services Division (contract #98-2001), the proposers response (as modified by written clarification and the Best and Final Offer), and the Request For Proposal, as amended, are hereby incorporated into and made part of this contract. These documents shall supersede all previous contract documents between the State and the Contractor and shall represent the complete contract between the two parties. In the event that a conflict arises regarding this contract, the order of precedence shall be in the same order as listed above, with the Term Contract being of greatest importance.

Only an addendum to the Term Contract, signed by the contractor and the State Procurement Bureau, may modify the terms and conditions of this contract.

**2.1 Delivery/Installation Damages**

The agency's required date for the equipment delivery shall be stated on the agency purchase order.

**2.2 Governing Laws - Venue**

The contract is governed by the laws of only the State of Montana. Any litigation arising from this contract shall be heard or filed in the First Judicial District in and for Lewis and Clark County, Montana. Each party shall pay its own legal fees and costs. The contractor shall comply with all applicable Federal, State, and local government regulations, and fair labor standards.

**2.3 Limitation of Liability**

Cisco's entire liability, except for claims for personal injury or death, shall be limited to the greater of \$1,000,000.00 per incident or the money paid to Cisco under this agreement during the six (6) month period preceding the incident or circumstances giving rise to such liability, whether in contract, tort (including negligence) or otherwise.

**2.4 Notice**

**2.5 Ordering Procedure**

In accordance with the terms of this contract, an agency purchase order must be issued to procure any item so provided. The purchase order will identify all items desired, the purchase order date, the desired delivery date, shipping locations, and prices.

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### PURCHASE ORDERS ARE VALID ONLY IF APPROVED BY THE CONTRACT MANAGEMENT LIAISON WHO IS AUTHORIZED TO APPROVE STATE AGENCY DATA PROCESSING HARDWARE ACQUISITIONS.

Orders shall reflect term contract prices in effect on the date of order issuance. When term contract prices or special promotions are about to expire, the agency initiating the order is responsible for calling or faxing the order information, on or before the expiration date. When so notified of an order prior to price increases or expiration of price reductions, the contractor shall honor the lower price(s), independent of equipment shipping date.

The University System and/or BEEN may cancel purchase orders, and return and reject equipment delivered at the contractor's expense, if any item on an order fails to conform to contract terms, conditions, or specifications. If either the University System and/or BEEN chooses to cancel an order for administrative reasons, every effort will be made to provide the contractor with advance notice. The state will not be liable for any costs incurred by the contractor due to order cancellation. The University System and BEEN will work with the contractor to mitigate any costs associated with a cancellation by assisting to find an alternative purchaser, where possible.

#### 2.6 Patent and Copyright Protection

The contractor will defend at its own expense any suit which may be brought against the State for the infringements of any patents or copyrights by the equipment or products furnished hereunder and in any such suit will satisfy any final award for such infringement. The State shall give the contractor prompt written notice of any such suit and full right and opportunity to conduct a defense thereof, together with full disclosure of all relevant information and the State's reasonable cooperation; and upon further condition that the claimed infringement does not result from the combination of equipment or products furnished hereunder with other equipment, apparatus or devices not furnished hereunder.

If principles of governmental or public law are involved, the State shall have the option to participate in the defense of any such action. If, in the contractor's opinion, the equipment or products furnished hereunder are likely to, or do, become the subject of a claim of an infringement of any patent, then without diminishing contractor's obligation to satisfy said final award, the contractor may at its option substitute for the alleged infringing equipment or products other equally suitable equipment or products satisfactory to the State; or at contractor's option and expense, obtain the right for the State to continue to use of such equipment or products. If the use of such equipment or products by the State shall be prevented by court action, contractor agrees to take back such equipment or products and refund any sums the State has paid the contractor under this contract.

#### 2.7 Performance, Labor and Materials Bond

Contract performance security in the amount of \$100,000 has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. All contract performance security, except bonds, will be returned to the Contractor after successful completion of the contract. This security must remain in effect for the entire contract period.

#### 2.8 Favorable Prices

Contractor agrees that, through the term of the initial contract and any agreed-upon extension, The State will be entitled to any lower prices made available to any other customer of comparable volume.

### 2.9 Price Quotations

All prices apply to enhancements and upgrades unless specifically stated otherwise in the contract response.

### 2.10 Problem Resolution

#### 2.10.1 Statewide and BEEN issues

Contractor is required to meet with the Contract Management Liaison to resolve technical or contractual problems that may occur during the term of the contract. Periodic meetings will occur as problems arise and will be coordinated by the Contract Management Liaison. For problem resolution meetings the contractor will be given a minimum of three (3) full working days notice of meeting date, time, and location. Problem resolution meetings may occur on a monthly basis, but will occur as often as problems warrant.

Face to face meetings are desired. However, at the contractor's option and expense a conference call meeting may be substituted. Failure to participate in two (2) consecutive meetings, missing or rescheduling two (2) problem resolution meetings, or failure to make a good faith effort to resolve problems, may be considered as a breach of the contract.

#### 2.10.2 Agency Specific Hardware Problems

Contractor shall meet or exceed the following problem resolution response and turnaround times:

Telephone coverage from 8:00 am to 5:00 pm, MST, each business day (Monday through Friday, excepting observed holidays).

One (1) business hour guaranteed technical response, at no additional cost, (by telephone) to telephone calls or messages, each business day (Monday through Friday, excepting observed holidays).

Twenty-Four (24) hours a day seven (7) days a week support is available under "SMARTnet" maintenance services for a fee.

#### 2.10.3 Problem Escalation

If service or a commitment for service is not delivered fast enough to meet the user agency's needs, the agency may contact the product service liaison and ask that a Cisco manager be alerted that a customer has an emergency and needs immediate assistance.

### 2.11 Prompt Payment

The ordering agency will pay for the equipment within 30 days from issuance of a signed State purchase order and; a) receipt of a properly executed claim or, b) the delivery and acceptance of all ordered equipment in satisfactory condition, whichever is later. The contractor is responsible for insuring that the contract and purchase order numbers are referenced on all billing/shipping correspondence, billing errors do not occur, and costs are identified for all available equipment or services being offered as part of this contract. The ordering agency will only be responsible for properly invoiced costs clearly set forth in this contract.

### 2.12 Recurring or Intermittent Problems

Contractor must support out-of-warranty products which continue to have the same recurring or intermittent problems as were experienced under warranty. This includes no cost repair as if the item(s) were still under warranty, for the same type of warranty service as was initially contracted.

### 2.13 Severability

If one or more provisions of the Term Contract are deemed to be unlawful or unconstitutional or stricken by a court of law, all valid provisions that are severable from the invalid provisions remain in effect and are valid and binding on the parties. If any provision hereof is in conflict with any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and it shall be modified to conform with such statute, rule of law, court order, or judgement. Failure to exercise any right or remedy by either party under this contract shall not be considered to be continuing or a waiver of the future operation of such term.

### 2.14 Standard of Performance - Acceptance Criteria

A performance period of thirty (30) calendar days shall commence on the date the equipment is installed and operable at the procuring agency. If equipment can not be installed within the first 30 calendar days after receipt by the agency, the agency will so notify the contractor in writing prior to the 30th day after receipt of the equipment, specifying when the performance period will begin.

If the equipment operates at the manufacturer's published specifications for a period of thirty (30) consecutive calendar days from the commencement of the performance period and meets all the requirements specified in the contract, it shall be deemed to have met the State's standard of performance.

If the equipment fails during the performance period, by becoming inoperable for more than one (1) full working day, the performance period will be terminated. After the equipment is repaired and placed again in operation, a new 30 day performance period will begin.

If successful completion of a thirty (30) consecutive calendar day performance period is not attained within ninety (90) calendar days from the installation date, the agency shall have the option of any one or all of the following:

- 1) terminating the agency purchase order upon written notice without penalty with full refund.
- 2) seeking replacement equipment.
- 3) continuing the performance tests.

The agency's option to cancel the agency purchase order shall remain in effect until such time as a successful completion of the performance period is attained. The contractor shall be liable for all preparation and shipping costs for ordered items returned under this clause. (This includes, but is not limited to, related system units which have been received, but which are incomplete without the delayed

unit, and therefore are being returned.)

### 2.15 Substitutions, Additions or Deletions

#### 2.15.1 Substitutions

Written notification, in the form of a contract modification, must be received by the purchasing liaison before any equipment substitution is made.

Product substitution shall require technical evaluation prior to product acceptance. Any product substitution will require a warranty equal to that of the original component.

#### 2.15.2 Substitutions Procedure

The contractor must obtain item substitution approval by sending a letter, with an attached listing of the equipment to be substituted and applicable new product specification/performance information to the purchasing liaison with a copy to the contract management liaison. All substitutions affecting the current term contract must be provided at least thirty (30) days prior to the contractor requested effective date of the revision(s). Substitutions may not be accepted until all testing is successfully completed.

#### 2.15.3 Additions/Deletions

New items or upgrades within the intent of the term contract product line may be added and obsolete or discontinued items or items no longer required by the State may be deleted. Prices for proposed products must be in the same price range, with the pricing discount applied, as similar products already under contract or similar, commercially available products. New products proposed must meet the intent of the term contract and the addition of the product(s) must be in the best interests of the State. The State of Montana reserves the right to test proposed products for compatibility with the minimum requirements of Section 5, "Project Specifications and Requirements" of RFP 140-V.

#### 2.15.4 Addition/Deletion Procedure

The procedure to be used to add or delete items from the contract, and thereby requesting a contract modification, are as follows:

The contractor may propose new items/deletions by sending a letter, with an attached listing of the equipment to be added/deleted and applicable new product specification/performance information to the Computing Policy and Development Unit of Information Technology Services Division. A copy of the letter and attachments must also be sent to the State Procurement Bureau. All additions and deletions affecting the current contract must be provided to State Procurement Bureau and BEEN at least thirty (30) days prior to the contractor requested effective date of the revision(s). Additions will not be accepted until all testing is successfully completed.

Approval/rejection of the request will be performed within approximately fifteen (15) days (provided no product testing or evaluation is required). Requested revisions to the contract may be submitted and reviewed under a mutually acceptable expedited schedule, on an exception basis only.

If requested by the contract management liaison, proposed products must be made available for testing and evaluation. The contract management liaison will forward the recommended action to the purchasing liaison for approval and processing.



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If a product testing or evaluation period (to be specified for each request) is required prior to an approval/rejection determination, the contractor will be notified of testing and evaluation requirements within approximately fifteen (15) days after receipt of request for change.

Products submitted for testing and evaluation, must be provided to the State within fourteen (14) working days and be available for testing for at least fourteen (14) working days. Contractors are responsible for inbound shipping.

The State will assume responsibility for outbound shipping. While in the possession of the State, products will be preserved in the condition in which they were received, except for normal testing wear and tear.

Support and replacement parts of discontinued items must be available for three (3) years after cessation of manufacture of discontinued products.

### 2.15.5 Replacement/Addition Criteria

The products must functionally enhance, upgrade, or replace a product on contract.

The products must be in the same price range as similar products already on contract or similar commercially available products and must have a discount comparable to other products on contract.

The products will be added if the purchasing and contract management liaison determine they meet the intent of the contract and are in the best interest of the State.

### 2.16 Term of Contract

The contract shall be for a period of three (3) years from the date of contract validation. This contract may, upon mutual agreement, and according to the terms of the existing contract, be extended at one (1) year intervals for a period not to exceed seven (7) additional years. This extension may be dependent upon legislative appropriations. In no case may this contract run longer than a ten (10) year period. At renewal, prices may be renegotiated on a case-by-case basis, providing that prices remain competitive with the industry in accordance with the enclosed "Price Protection" provision.

### 2.17 Contract Termination

The State may, by written notice to the contractor, terminate this contract in whole or in part at any time the contractor fails to perform this contract.

### 2.18 Time and Material Charges

### 2.19 Transportation and Return of Equipment

Initial shipment to the installation site shall be made FOB destination. The contractor shall be responsible for all transportation arrangements including insurance. The title for all items will pass at the destination point. However, as part of the cost of the equipment the contractor shall charge the State actual transportation expenses providing the charges do not exceed 115% of the transportation estimates submitted in the contract.

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Priority transportation expenses will be reimbursed if the purchasing agency has requested the priority transportation in writing.

Should it become necessary to return the equipment for maintenance after the warranty period, the procuring agency will be responsible for all transportation arrangements from the installation site to the destination and the contractor shall be responsible for the transportation arrangements necessary to return the equipment to the installation site.

### 2.20 Warranty

Aside from this warranty, Williams will also warranty, for a period of two years from the Acceptance date (the "Warranty Period"), Nextira One warrants that the system will be free from defects in materials and workmanship and shall operate in accordance with the manufacturer specifications. If warranty work is necessary, Nextira One will, at its option, repair or replace the system or its components. Such repair or replacement, including both parts and labor, will be at Nextira One's expense.

The above warranty is in lieu of all other express warranties. This Agreement excludes all implied warranties, including, but not limited to, the warranties of merchantability and fitness for a particular purpose. Nextira One disclaims any warranty to prevent unauthorized use of the system including toll fraud. Customer's sole and exclusive remedy for breach of warranty is limited to Nextira One performance as set forth above and Nextira One liability will cease at the end of the Warranty period including liability for manufacturing defects not discovered within the Warranty Period. Repair and replacement parts may be new or like new.

The warranty above and any subsequent maintenance provided during any maintenance term under this Agreement excludes repairs or replacements, whether occasioned by Customer or a third party, made necessary by misuse, negligence, accident, theft or unexplained loss, abuse, connection to foreign or non-dedicated electric current, fire, water, flood, wind, storms, lightning, any act of God or public enemy, Customer's failure to provide a suitable operating environment, failures or changes required resulting from the local exchange company, interexchange carrier, the power company, other transmission providers, unauthorized attachments or modification, or improper software changes, wiring, installation, repair or alteration by persons unauthorized by Nextira One or additions of hardware which exceed the software's specified capacity. Nextira One may perform repairs necessitated by any excluded cause at Customer's request at Nextira One then prevailing rates.